

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: City of Sioux City Woodbury County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2012-AQ-11
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TO: Nicole M. Jensen-Harris, City
Attorney City of Sioux City
P.O. Box 447
405 6th Street
Sioux City, Iowa 51102

I. SUMMARY

This administrative consent order (order) is entered into between the City of Sioux City (City) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order concerning the demolition and disposal of a building containing asbestos in noncompliance with the asbestos regulations.

Any questions or responses regarding this order should be directed to:

Relating to technical requirements:

Tom Wuehr
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-7212

Relating to legal requirements:

Carrie Schoenebaum, Attorney
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, Iowa 50319
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

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II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts

1. The City owns and operates a municipal airport. The violations which are subject to this order took place at a portion of the airport locally known as 5806 Discovery Boulevard, Sioux City, located at Section 88 Township 48 Range 25 Woodbury County, Iowa. On or about September 10, 2010, the City declared a 20,000 square foot, 80 year old, airport hanger to be structurally unsound and in imminent danger of collapse. The airport hanger was constructed of transite panels which contained cement and asbestos. Further, the building contained a large boiler unit that was coated with asbestos material and had piping that was both mudded at the joints and contained aircell pipe-insulation. Because of the building's condition, the City determined it would demolish the building. In accordance with state and federal law the entire building had to be demolished in accordance with asbestos abatement requirements and the demolition had to be conducted by a licensed asbestos abatement contractor.
2. On October 5, 2010, the Department received a complaint alleging that a building demolition was taking place at the above mentioned property and that asbestos containing material was being improperly demolished by Hebert Construction, Co (Hebert Construction).
3. On October 6, 2010, Tom Wuehr, an Environmental Specialist with the Department, conducted an onsite investigation. During the investigation, he contacted George Hebert, President of Hebert Construction, who confirmed that his company had been hired to demolish the aircraft hanger facility. Through speaking to Mr. Hebert and onsite observations Mr. Wuehr determined the following: (1) none of the asbestos containing material was removed prior to demolition; (2) the asbestos containing material was friable because it was crushable by hand; (3) the asbestos containing material was transported to a nearby landfill and was disposed of as regular waste; (4) Mr. Hebert informed Mr. Wuehr that the trucks carrying the asbestos waste were not marked as required by law and no waste shipment records were maintained; and (5) asbestos.

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containing debris was being emitted to the outside air throughout the demolition site. Mr. Hebert confirmed that neither his company nor the City had notified the Department prior to the start of demolition and that Hebert Construction was not properly licensed to conduct asbestos abatement demolition activities.

4. The Department estimates that approximately 6 workers were exposed to the asbestos for approximately 12 hours.

5. While on site, Mr. Wuehr took samples and confirmed the presence of asbestos containing material. The University of Iowa State Hygienic Laboratory analyzed all samples and all samples tested positive for asbestos. The concentrations ranged from 5% to 38% asbestos.

6. On October 27, 2010, the Department sent a Notice of Violation (NOV) to the City for the City's failure to comply with the asbestos notification, emission control, and disposal requirements. Further, the City failed to have an on-site individual trained in supervising the handling of asbestos material and it failed to properly dispose of asbestos containing material. This debris was sent to the local landfill as non-asbestos containing debris. Once at the landfill it was not treated any differently than non-hazardous waste.

IV. CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable to this matter.

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (Commission) to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 Iowa Administrative Code (IAC) 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR 61.145 details the "standard for demolition and renovation." This provision requires that notification of demolition of a structure obtaining asbestos be submitted to the Department. The timing of the notification and its contents depend upon the type of demolition activity. The notification submitted by the City was not sufficient. A bulk of the information required by the form was not completed and some of the information provided was contradictory and/or inaccurate.

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- 3 40 CFR 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that the City was not in compliance with these provisions when the demolition project occurred. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. During Mr. Wuehr's inspection he observed asbestos containing material that had been broken, dislodged and disturbed. Therefore, the facts in this case indicate violations of this provision. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. The asbestos containing material was wetted only after Mr. Wuehr told Hebert Construction to do so. The facts in this case indicate violations of this provision. 40 CFR 61.145(c)(8) provides no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the demolition of the airport hanger despite the fact regulated asbestos containing material was being disturbed by the demolition activities. The above facts indicate noncompliance with this provision.
4. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. 40 CFR 61.150(d)(1)(i) through (viii) state, in part, that the owner or operator maintain the following for all asbestos containing waste material transported off the facility site: (1) waste shipment records including name, address and telephone number of the disposal site operator; (2) the name and physical site location of the disposal site; and (3) the date the waste was transported and the name, address and telephone number of the transporter. No such records were generated. Consequently the above facts indicate violations of this provision.
5. 40 CFR 61.150(d)(2) requires that an owner or operator shall provide a copy of the waste shipment records to disposal site owners or operators at the same time as the asbestos-containing material is delivered to the disposal site. No such waste shipment records were delivered per telephone conversation with George Hebert, on October 22, 2010, as well as previous telephone conversations with employees at L. P. Gill Landfill in Jackson, Nebraska. The above stated facts indicate a violation of this provision.

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V. ORDER

THEREFORE, the Department orders and the City agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. In the future comply with the laws governing asbestos demolition and disposal; and
2. The City shall pay a penalty of \$10,000.00 within 30 days of the date the Director of the Department signs this order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$10,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

- a. **Economic Benefit** The City saved a significant amount of time and money by not hiring a licensed asbestos abatement contractor to demolish the building. The Department spoke to several asbestos abatement contractors who stated that an ordered demolition of a 20,000 square foot transite building with boiler and other material would cost a minimum of \$60,000.00 and this number does not include the cost of removal of the cement floor. Further, because the waste was not disposed of as asbestos containing waste it is estimated that the City saved approximately \$30.00 a ton; there were approximately 170 tons. Therefore, it is estimated that \$5,000.00 was saved in landfill fees. To settle this matter administratively, the Department assesses \$5,000.00 for this factor.
- b. **Gravity of the Violation** The integrity of the asbestos NESHAP program is threatened when regulations established to protect the public are not followed. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow proper procedures to remove and dispose of regulated asbestos containing material can create a hazard to the public through the release of

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asbestos fibers. This project involved the disturbance of a large amount of asbestos by employees. The potential health threat posed to those workers who removed the asbestos material must be considered to be significant since no trained site supervisor was present. Further, individuals near the construction site and downwind of the construction site were also potentially exposed to asbestos. For these reasons, \$3,000.00 is assessed for this factor.

c **Culpability.** In determining the degree of intent or negligence the standard of care required by the laws of the state of Iowa should be considered. The Department asserts that the City's actions were negligent rather than intentional. Generally negligence is defined as "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation." *Black's Law Dictionary*, 470 (2nd Pocket Edition, 2001). The violations involved in this order were violations of conditions of the Code of Federal Regulations, Iowa Code and Iowa Administrative Code. A reasonable person should be aware of the laws which govern their business. Further when reviewing bids for the demolition of this building the City should have ensured that all the bidding contractors were permitted asbestos abatement contractors, as well as demolition contractors. Failure to do so shows that the appropriate standard of care was not applied. Moreover, failure to demolish the building in accordance with the asbestos NESHAP program also shows that the appropriate standard of care was not applied. Therefore, \$2,000.00 is assessed for this factor.


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VII. APPEAL RIGHTS

Iowa Code section 455B.138 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, all rights to appeal this order are waived by all parties.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



Paul Eckert, City Manager of the City of Sioux City

Dated this 23 day
April, 2012



Roger L. Lande, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 24th day
April, 2012

Sioux City; Tom Weuhr; Carrie Schoenebaum; EPA; VI.C, VII C.4,